

12-1-2014

# Rekow v. Weekes Appellant's Brief 1 Dckt. 42265

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IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM REKOW, )  
 ) SUPREME COURT NO. 42265  
Plaintiff/Appellant )  
 ) APPELLANT'S BRIEF  
vs. )  
 )  
RONALD WEEKES, )  
 )  
Defendant/Respondent. )  
 )  
 )  
\_\_\_\_\_ )

Appealed from the District Court of the Third Judicial District of the State of Idaho, in and for  
The County of Gem, BEFORE THE HONORABLE SUSAN E. WIEBE, DISTRICT COURT  
JUDGE.

JILL S. HOLINKA, Attorney at Law  
950 West Bannock Street, Suite 520  
Boise, Idaho 83702

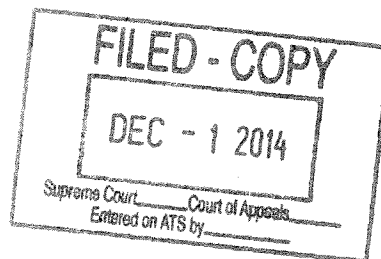
Attorney for Defendant/Respondent

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1493 South Johns Avenue  
Emmett, Idaho 83617

Pro Se for Plaintiff Appellant

Lawrence G. Wasden, Idaho Attorney General  
State Capitol Building  
701 West Jefferson  
Boise, Idaho 83701

Attorney for Respondent



Appellant/Plaintiff/Tenant, WILLIAM D. REKOW, appearing Pro Se, hereby submits this Brief in furtherance of his appeal of the Order of Summary Judgment rendered by the Honorable Susan E. Wiebe, District Judge, Third Judicial District, County of Gem, State of Idaho, arising as a result of a hearing held March 18, 2014 in the Gem County Courthouse, Emmett, Idaho. The Judge's ruling in the abovementioned Order denied Appellant's claim for damages under Idaho's Landlord-Tenant statutes, to wit: **Idaho Code Section 6-320, subparagraph (d)**, interpreting that section as linking a tenant's right to standing to file for damages directly to the date standing to file was achieved by service of a written notice of defects upon a landlord. Nowhere in that subparagraph does it specify, indicate or even intimate that a tenant has no damages before achieving standing to file.

Appellant was also denied damages in lieu of specific performance, even though Respondent, after five (5) months of verbal complaints from Appellant (June 2008 to November 2008) made an unsuccessful repair attempt on the unreliable water delivery system. **(See Defendant's Exhibit No. 204 Page 3 of 3, Valley Pump and Equipment Co., Inc., Invoice #101801, in the amount of \$420.15, dated November 25, 2008, marked 'Paid 01/11/2010')** In January 2009, once again as a response to Appellant's verbal request for repair of the water delivery system, a second service call did not solve the water delivery problem. **(See Defendant's Exhibit No. 204 Page 2 of 3, Valley Pump and Equipment Co., Inc., Invoice #102034, in the amount of \$459.17, dated 1/7/2009, marked 'Paid 01/11/2010')**. Both unsuccessful repair attempts show that: (1) Respondent/Landlord acted on Appellant/Tenant's verbal requests for that specific defect's repair; (2) Respondent/Landlord was aware of the continuing failure of the

water delivery system; and, (3) Appellant/Tenant had “damages” beginning in June 2008, continuing up to and until the Honorable Tyler Smith (presiding Judge in the unlawful detainer hearing, held January 13, 2013) declared the premises for which Appellant was being charged almost Six Hundred Dollars (\$600.00) per month to be “uninhabitable”. [See CV-2013-3, January 13, 2013 Hearing Transcript, Page 8, Line 18 through Page 9, Line 5.]. In support of this, Appellant refers this honorable Court to the Judgment filed by the Court in Case No. CV-2013-3, which clearly shows “restitution of the premises”, and assesses not one penny of rental liability to Appellant/Tenant. It should be noted that Judge Smith viewed only about thirty (30) of the approximately two hundred (200) defects photographs submitted to the Court in the action which is appealed herein.

Appellant/Plaintiff herein did file a Motion For Reconsideration regarding the Court’s reading of the pertinent Code section, as well as a reconsideration of the Court’s denial of Appellant/Plaintiff’s motion to amend his Complaint to add as a party defendant a co-owner of the property, i.e. Respondent/Defendant’s spouse, ANGELA WEEKES. **The Honorable Susan E. Wiebe, denied the Motion for Reconsideration.**

Respectfully submitted this 1<sup>st</sup> day of December, 2014

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WILLIAM REKOW, Appellant Pro Se

## CASES AND AUTHORITIES

**Idaho Code Section 6-320, et seq.** which delineates “landlord responsibilities” to maintain a rental property with water, electric service, without a leaking roof, and with working smoke detectors..

**Idaho Code Section 44-1903** which requires that there be at least one (1) working toilet facility in a clean and sanitary condition for workers on a farm .

**Idaho Code Section 55-2015** which prohibits a landlord from decreasing services or increasing rent because a tenant has requested repairs.

**Fazzio v. Mason, 249 P.3d 390 (Idaho 2011)** while this dealt with real estate purchase, not rental, the Court clearly upheld that it is within the discretion of the Court to award damages when specific performance is impossible.

In the **Rekow v. Weekes** action, specific performance had been made ‘impossible’ when Respondent/Defendant destroyed the rental premises in March, 2014.

**Jesse v. Lindsley, 233 P.3d 1 (Idaho 2008)** wherein the Court upheld the express provision of I.C. Section 6-320 as a means to obtain standing to file an action being reliant upon written notice of defects served upon a landlord. Nowhere does the Court take the position that damages were dependent upon standing. The Court merely reiterated that a tenant must have standing in order to file a suit for damages.

**Silver Creek Computers, Inc. v. Petra, Inc., 42 P.3d 672 (Idaho 2002)** wherein the Court determined that written notice to achieve standing to file under Idaho Code Section 6-320 was not required to be made within 3 days of the incident. Appellant cites this case as further support of his stance that the District Court in **Rekow v. Weekes** erred in linking his damages to his written notice to Respondent in order to bring the suit for damages.

**Worden v. Ordway, 672 P.2d 1049 (Idaho 1983)** In this case, the Opinion of Justice Huntley that Mr. Ordway took Mrs. Worden’s rental monies and failed to supply a suitable abode, as well as refusing to make needed repairs, much the same situation of Appellant herein being denied a reliable water delivery system to the rental house; and, Respondent refused to repair the leaking roof or replace missing doors, windows and window screens.

**CERTIFICATE OF SERVICE**

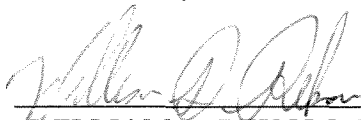
The undersigned hereby certifies that two (2) bound copies of the Appellant's Brief filed with the Idaho Supreme Court Clerk on December 1<sup>st</sup>, 2014 were served by hand-delivering to the persons listed below at the addresses set out:

Lawrence Wasden, Esq.  
Idaho Attorney General's Office  
State Capitol Building  
701 West Jefferson  
Boise, Idaho 83701                      Attorney for Respondent

The Honorable Susan E. Wiebe  
District Court  
1130 3<sup>rd</sup> Avenue North  
Payette, Idaho 83661

Jill S. Holinka, Esq.  
950 West Bannock St.  
Suite 520  
Boise, Idaho 83702                      Attorney for Defendant Weekes

I certify that the forgoing is true and correct. Executed this 1<sup>st</sup> day of December, 2014 at Emmett, Gem County, Idaho.



---

WILLIAM D. REKOW, Pro Se  
Appellant/Plaintiff/Tenant

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Emmett, Idaho 83617

WILLIAM REKOW, )  
 )  
Plaintiff/Appellant, )  
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vs. )  
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RONALD WEEKES, )  
 )  
Defendant/Respondent. )  
\_\_\_\_\_ )

Supreme Court No. 42265

NOTICE OF LODGING OF REPORTER'S  
TRANSCRIPT AND CLERK'S RECORD

Notice is hereby given that on the 28<sup>th</sup> day of Aug, 2014, the Clerk's Record (x)  
Reporter's Transcript (x) in the above-referenced appeal was lodged with the District Court  
Clerk.

The parties shall have twenty-eight (28) days from the date of service of the appeal record to file  
any objections, together with a Notice of Hearing, with the District Court. If no objections is  
filed, the record will be deemed settled and will be filed with the Supreme Court.

SHELLY TILTON  
Clerk of the District Court

Melissa Conklin

By \_\_\_\_\_  
Deputy Clerk

NOTICE OF LODGING THE CLERK'S RECORD  
AND THE REPORTER'S TRANSCRIPT